

EMPLOYMENT APPEALS BOARD DECISION
2023-EAB-0172

*Order No. 23-UI-212731 Reversed ~
Late Request for Hearing Allowed, Merits Hearing Required
Order No. 23-UI-213065 ~ Reversed & Remanded*

PROCEDURAL HISTORY: On August 29, 2022, the Oregon Employment Department (the Department) served a Notice of Determination for Pandemic Unemployment Assistance (PUA) concluding that claimant was not eligible to receive PUA benefits effective March 15, 2020. On September 19, 2022, the August 29, 2022 administrative decision became final without claimant having filed a request for hearing. On September 29, 2022, the Department served notice of an administrative decision, based in part on the August 29, 2022 administrative decision, concluding that claimant willfully made a misrepresentation and failed to report a material fact to obtain benefits, and assessing an overpayment of \$9,363.00 in PUA benefits, \$11,400 in Federal Pandemic Unemployment Compensation (FPUC) benefits, and \$1,800 in Lost Wages Assistance (LWA) benefits that claimant was required to repay to the Department and a \$3,114.45 monetary penalty. On October 19, 2022, claimant filed a late request for hearing on the August 29, 2022 administrative decision and a timely request for hearing on the September 29, 2022 administrative decision.

On January 11, 2023, ALJ Lucas conducted a combined hearing on both administrative decisions. On January 17, 2023, ALJ Lucas issued Order No. 23-UI-212731, concluding that claimant did not have good cause to file the late request for hearing on the August 29, 2022 administrative decision and leaving that decision undisturbed. On January 19, 2023, ALJ Lucas issued Order No. 23-UI-213065, modifying the September 29, 2022 administrative decision by concluding that claimant was liable for a repayment of \$9,363.00 in PUA benefits, \$11,400 in FPUC benefits, and \$1,800 in LWA benefits, but that the overpayment was not the result of a willful misrepresentation to obtain benefits and that claimant therefore was not liable for a monetary penalty. On January 24, 2023, claimant filed applications for review of Orders No. 23-UI-212731 and 23-UI-213065 with the Employment Appeals Board (EAB).

Pursuant to OAR 471-041-0095 (October 29, 2006), EAB consolidated its review of Orders No. 23-UI-212731 and 23-UI-213065. For case-tracking purposes, this decision is being issued in duplicate (EAB Decisions 2023-EAB-0172 and 2023-EAB-0171).

WRITTEN ARGUMENT: Claimant submitted written arguments on February 6, 2023 and February 27, 2023.¹ Claimant’s arguments contained information that was not part of the hearing record, and did not show that factors or circumstances beyond claimant’s reasonable control prevented her from offering the information during the hearing. Under ORS 657.275(2) and OAR 471-041-0090 (May 13, 2019), EAB considered only information received into evidence at the hearing when reaching this decision. EAB considered claimant’s arguments to the extent they were based on the record.

The parties may offer new information, such as the new information contained in claimant’s written arguments, into evidence at the remand hearing. At that time, it will be determined if the new information will be admitted into the record. The parties must follow the instructions on the notice of the remand hearing regarding documents they wish to have considered at the hearing. These instructions will direct the parties to provide copies of such documents to the ALJ and the other parties in advance of the hearing at their addresses as shown on the certificate of mailing for the notice of hearing.

FINDINGS OF FACT: (1) On August 29, 2022, the Department mailed the August 29, 2022 administrative decision to claimant’s address on file with the Department. The August 29, 2022 administrative decision stated, “You have the right to appeal this decision if you do not believe it is correct. Your request for appeal must be received by September 19, 2022.” Order No. 23-UI-212731 Exhibit 1 at 2.

(2) The address to which the Department mailed the August 29, 2022 administrative decision was that of claimant’s parents’ house, located in Blaine, Washington. Claimant had been living with her parents at that address until March 2022, at which point she moved to Lynden, Washington. Claimant did not update her address with the Department at that time.

(3) The August 29, 2022 administrative decision did not arrive at claimant’s parents’ house until October 10, 2022. Claimant’s father gave the decision to claimant that day. Around the same time, claimant received the September 29, 2022 administrative decision. Claimant noted that the September 29, 2022 administrative decision indicated an appeal deadline of October 19, 2022.

(4) On October 10, 2022, after receiving the August 29, 2022 administrative decision, claimant attempted to contact the Department investigator who had authored the decision. Claimant left a voicemail for the investigator regarding the administrative decision. The investigator did not return claimant’s call.

(5) On October 19, 2022, claimant filed requests for hearing on both administrative decisions. Claimant decided to file the requests for hearing that day because she knew that the request for hearing on the September 29, 2022 administrative decision was due that day and she had not received a response from the Department. Claimant was not aware at the time that her request for hearing on the August 29, 2022 administrative decision was late.

¹ These submissions were titled, respectively, “Request for Reconsideration On Ruling on Objection Or IN the Alternative Request to Review/Reopen The Hearing(s)” and “Statement of [claimant] To The Employment Appeals Board.” EAB construes both of these submissions as written arguments subject to the requirements of OAR 471-041-0080 and OAR 471-041-0090.

(6) The overpayment of benefits and monetary penalty assessed by the September 29, 2022 administrative decision was the result of the conclusion reached in the August 29, 2022 administrative decision, which retroactively determined that claimant was not eligible to receive PUA benefits she had been paid for a period of weeks in 2020 and 2021.

CONCLUSIONS AND REASONS: Claimant had good cause to file the late request for hearing on the August 29, 2022 administrative decision. Order No. 23-UI-212731 is therefore reversed, and this matter remanded for a hearing on the merits of the August 29, 2022 administrative decision. Order No. 23-UI-213065 is reversed and remanded for further development of the record to determine whether claimant remains liable for the overpayment of benefits, pending the outcome of the hearing on the merits of the August 29, 2022 administrative decision.

Late request for hearing. ORS 657.269 provides that the Department’s decisions become final unless a party files a request for hearing within 20 days after the date the decision is mailed. ORS 657.875 provides that the 20-day deadline may be extended a “reasonable time” upon a showing of “good cause.” OAR 471-040-0010 (February 10, 2012) provides that “good cause” includes factors beyond an applicant’s reasonable control or an excusable mistake, and defines “reasonable time” as seven days after those factors ceased to exist.

The request for hearing on the August 29, 2022 administrative decision was due by September 19, 2022. Because claimant did not file her request for hearing until October 19, 2022, the request was late. The record shows that claimant did not receive the August 29, 2022 administrative decision until October 10, 2022. Order No. 23-UI-212731 concluded that while the reason for the late filing was outside of claimant’s reasonable control, claimant did not file the late request for hearing within a “reasonable time” because the factor beyond her reasonable control ceased to exist when she received the administrative decision on October 10, 2022. Order No. 23-UI-212731. The record does not support this conclusion.

Rather, the record shows that claimant’s failure to file a timely request for hearing was the result of her delayed receipt of the August 29, 2022 administrative decision, the Department’s failure to return her October 10, 2022 call, and the fact that she had no notice of the seven-day “reasonable time” requirement under OAR 471-040-0010. On the latter point, the record does not show that the August 29, 2022 administrative decision gave claimant any indication that such a deadline would be applicable if she were to file a request for hearing at any point after the timely filing deadline. *See* Order No. 23-UI-212731 Exhibit 1 at 2. Instead, the only deadline of which claimant was both aware and could actually meet was the October 19, 2022 deadline that applied to the September 29, 2022 administrative decision. Therefore, claimant missed the timely appeal deadline for the August 29, 2022 administrative decision as a result of an excusable mistake that did not cease until she filed the requests for hearing on both decisions on October 19, 2022. As this occurred on the same day that claimant’s excusable mistake ceased, she also filed the request for hearing within a reasonable time.

For the above reasons, claimant had good cause for failing to file a timely request for hearing, and filed her late request for hearing within a reasonable time. Claimant’s late request for hearing on the August 29, 2022 administrative decision therefore is allowed, and claimant is entitled to a hearing on the merits of that decision.

Overpayment. Order No. 23-UI-213065 found that claimant was liable for an overpayment of benefits because the August 29, 2022 administrative decision, which retroactively determined that claimant was not eligible for benefits she had received in 2020 and 2021, remained undisturbed after her late request for hearing on that decision. Order No. 23-UI-213065 at 12, 14–17, 20. However, as explained above, claimant met her burden to show that she had good cause to file the late request for hearing, and she is therefore entitled to a hearing on the merits of that decision. That decision addresses claimant’s eligibility for the benefits that were determined by the September 29, 2022 administrative decision to have been overpaid. As such, the record requires further development to determine if claimant was actually eligible for any of the benefits deemed overpaid under the September 29, 2022 administrative decision before a decision can be reached as to what overpayment, if any, claimant remains liable for.

DECISION: Orders No. 23-UI-212731 and 23-UI-213065 are set aside, and these matters remanded for further proceedings consistent with this order.

D. Hettle and A. Steger-Bentz;
S. Serres, not participating.

DATE of Service: March 17, 2023

NOTE: The failure of any party to appear at the hearing on remand will not reinstate Orders No. 23-UI-212731 or 23-UI-213065 or return these matters to EAB. Only timely applications for review of the subsequent orders will cause these matters to return to EAB.

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Understanding Your Employment Appeals Board Decision

English

Attention – This decision affects your unemployment benefits. If you do not understand this decision, contact the Employment Appeals Board immediately. If you do not agree with this decision, you may file a Petition for Judicial Review with the Oregon Court of Appeals following the instructions written at the end of the decision.

Simplified Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Traditional Chinese

注意 – 本判決會影響您的失業救濟金。如果您不明白本判決，請立即聯繫就業上訴委員會。如果您不同意此判決，您可以按照該判決結尾所寫的說明，向俄勒岡州上訴法院提出司法複審申請。

Tagalog

Paalala – Nakakaapekto ang desisyong ito sa iyong mga benepisyo sa pagkawala ng trabaho. Kung hindi mo naiintindihan ang desisyong ito, makipag-ugnayan kaagad sa Lupon ng mga Apela sa Trabaho (Employment Appeals Board). Kung hindi ka sumasang-ayon sa desisyong ito, maaari kang maghain ng isang Petisyon sa Pagsusuri ng Hukuman (Petition for Judicial Review) sa Hukuman sa Paghahabol (Court of Appeals) ng Oregon na sinusunod ang mga tagubilin na nakasulat sa dulo ng desisyon.

Vietnamese

Chú ý - Quyết định này ảnh hưởng đến trợ cấp thất nghiệp của quý vị. Nếu quý vị không hiểu quyết định này, hãy liên lạc với Ban Kháng Cáo Việc Làm ngay lập tức. Nếu quý vị không đồng ý với quyết định này, quý vị có thể nộp Đơn Xin Tái Xét Tư Pháp với Tòa Kháng Cáo Oregon theo các hướng dẫn được viết ra ở cuối quyết định này.

Spanish

Atención – Esta decisión afecta sus beneficios de desempleo. Si no entiende esta decisión, comuníquese inmediatamente con la Junta de Apelaciones de Empleo. Si no está de acuerdo con esta decisión, puede presentar una Aplicación de Revisión Judicial ante el Tribunal de Apelaciones de Oregon siguiendo las instrucciones escritas al final de la decisión.

Russian

Внимание – Данное решение влияет на ваше пособие по безработице. Если решение Вам непонятно – немедленно обратитесь в Апелляционный Комитет по Трудоустройству. Если Вы не согласны с принятым решением, вы можете подать Ходатайство о Пересмотре Судебного Решения в Апелляционный Суд штата Орегон, следуя инструкциям, описанным в конце решения.

Khmer

ចំណុចសំខាន់ – សេចក្តីសម្រេចនេះមានផលប៉ះពាល់ដល់អត្ថប្រយោជន៍គ្មានការងារធ្វើរបស់លោកអ្នក។ ប្រសិនបើលោកអ្នកមិនយល់អំពីសេចក្តីសម្រេចនេះ សូមទាក់ទងគណៈកម្មការឧទ្ធរណ៍ការងារភ្លាមៗ។ ប្រសិនបើលោកអ្នកមិនយល់ស្របចំពោះសេចក្តីសម្រេចនេះទេ លោកអ្នកអាចដាក់ពាក្យប្តឹងសុំឲ្យមានការពិនិត្យរឿងក្តីឡើងវិញជាមួយតុលាការឧទ្ធរណ៍រដ្ឋ Oregon ដោយអនុវត្តតាមសេចក្តីណែនាំដែលសរសេរនៅខាងចុងបញ្ចប់នៃសេចក្តីសម្រេចនេះ។

Laotian

ເອົາໃຈໃສ່ – ຄຳຕັດສິນນີ້ມີຜົນກະທົບຕໍ່ກັບເງິນຊ່ວຍເຫຼືອການຫວ່າງງານຂອງທ່ານ. ຖ້າທ່ານບໍ່ເຂົ້າໃຈຄຳຕັດສິນນີ້, ກະລຸນາຕິດຕໍ່ຫາຄະນະກຳມະການອຸທອນການຈ້າງງານໃນທັນທີ. ຖ້າທ່ານບໍ່ເຫັນດີນຳຄຳຕັດສິນນີ້, ທ່ານສາມາດຍື່ນຄຳຮ້ອງຂໍການທົບທວນຄຳຕັດສິນນຳສານອຸທອນລັດ Oregon ໄດ້ໂດຍປະຕິບັດຕາມຄຳແນະນຳທີ່ບອກໄວ້ຢູ່ຕອນທ້າຍຂອງຄຳຕັດສິນນີ້.

Arabic

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Farsi

توجه - این حکم بر مزایای بیکاری شما تاثیر می گذارد. اگر با این تصمیم موافق نیستید، بلافاصله با هیأت فرجام خواهی استخدام تماس بگیرید. اگر از این حکم رضایت ندارید، می‌توانید با استفاده از دستور العمل موجود در پایان آن، از دادگاه تجدید نظر اورگان درخواست تجدید نظر کنید.

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